

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

In re ; Michael Francis Murray) Petition for Writ of Mandamus
Petitioner / Affiant) Pursuant to F.R.A.P. 21
) Case No. 07-10157-DPW
))
))
Union County))
) ss
State of Pennsylvania)

PETITION FOR WRIT OF MANDAMUS BY AFFIDAVIT

COMES NOW, Michael Francis Murray, hereinafter, 'Petitioner/Affiant' in the above referenced matter appearing specially in propria persona and hereby moves this Honorable Court, in the interest of justice, to grant his Petition therein directing the District Court to respond to his 'Good Faith' filing of a Writ of Coram Nobis.

HISTORICAL SYNOPSIS

Petitioner's Coram Nobis is yet another action in the seemingly endless progression of cases involving the Government's diminished relationship with James 'Whitey' Bulger.

Petitioner alleges, and the 'finding(s) of fact(s)' by the late District Judge Reginald Lindsay in McIntyre v. United States, 447 F.Supp. 2d @ 54, upheld by the First Circuit Court of Appeals in 545 F.3d @ 27 support his allegations that not only did the Government know of Petitioner's warehouse location at 345 D Street in South Boston prior to a warrantless and subsequent search pursuant to a warrant, they falsified and intentionally mislead Magistrate Joyce London Alexander in their Affidavit to support said warrant. (see: Murray v. United States, 101 L.Ed 2d @ 472)

In addition, the Government intentionally withheld Brady material favorable to Petitioner's defense and gave false and misleading testimony before the Court to not only gain conviction, but to preserve the identity of their confidential informant (identified as CI-3) James 'Whitey' Bulger. (see: District Court case no. (83-00102-03-S)

This Government affidavit in support also contained statements of the only other confidential informers identified as CI-1 & CI-2. These informers stated their observations of acts conducted by Arthur 'Bucky' Barrett and individual arrested with Petitioner in this 1983 matter on April 6th. However, while on bail, Mr. Bulger kidnapped, tortured and killed Mr. Barrett. His remains were later discovered with the aid of a cooperating witness, Mr. Kevin Weeks.

Along with the personal tragedy brought upon Mr. Barrett's family, Petitioner was denied subsequent due process at his trial and the effective assistance of counsel as they were now deprived the opportunity to cross examine CI-1 & CI-2 as their activities only pertained to Mr. Barrett, whom by this time was deceased.

Petitioner has entered into the record of his Coram Nobis a sworn affidavit from Attorney Brian McMenimen stating effectively that had he been made aware of the 'true' factual issues relating to Mr. Bulger and his relationship with F.B.I. agent John Connolly concerning the real source of the information now known that knowledge could have produced a different result at Petitioner's trial.

CHRONOLOGY OF EVENTS TO SUPPORT MANDAMUS

On July 13th, 2007, a Petition for a Writ of Coram Nobis was filed on my behalf in the District Court in Boston and docketed as no. 07-10157-DPW.

A response via 'Motion to Dismiss' was filed by the Government on August 2nd, 2007.

Petitioner's 'Motion in Opposition' was filed on October 3rd, 2007.

Upon these filings, a hearing was conducted in the District Court by the Honorable Douglas P. Woodlock on June 24, 2008 to determine the vitality of the Writ of Coram Nobis as it pertained to Petitioner, whereupon he ordered the Government to respond to the issues and facts as raised therein.

On or about February 23, 2009, the Government submitted their opposition and Petitioner's reply was filed on April 28th, 2009.

On or about January 6th, 2011, Petitioner caused to be filed through counsel a personal appeal by letter (with service upon opposing counsel) to Judge Woodlock for a hearing to resolve this matter.

Petitioner's Coram Nobis rests upon several categories of newly discovered evidence, which when reviewed in chronological order serve to fatally undermine a previous trial before the late Judge Walter J. Skinner (83-00102-03-S) from which I was a Defendant and subsequently convicted of conspiracy to possess with intent to distribute marijuana in violation of the Drug Control and Prevention Act of 1970.

In part, Petitioner relies upon the findings of fact issued in McIntyre .v. United States, 447 F.Supp. 2d @ 54, upheld by the First Circuit Court of Appeals in 545 F.3d @ 27. In addition, these 'Findings' were also memorialized in a case management order, without Government objection, by the Honorable Judge William G. Young in Litif .v. United States, Lexis 7493 (January 29, 2010).

Petitioner's firm belief is that these 'Findings' are entitled to a 'Presumption of Correctness' under the standard(s) set forth by the First Circuit in Teti .v. Bender, 507 F.3d @ 50.

Petitioner has been continuously incarcerated since January 13th, 1994 on an un-related marijuana conviction in Massachusetts (Case No. 91-10305-WGY), serving a 30 year term of incarceration which was enhanced by the challenged conviction that is now the nexus of his Coram Nobis.

Petitioner, at the time of filing his Coram Nobis (July 13th, 2007) also filed a 'Motion for an Instant Hearing' due to the potential 'liberty interest' created by a favorable ruling of his Coram Nobis. This 'Motion' remains un-responded to.

PRAYER AND REMEDY REQUESTED

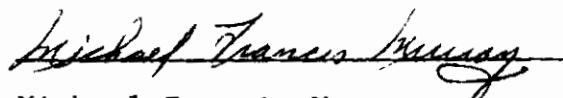
Petitioner hereby prays that this Honorable Court, will upon its review and good cause shown, issue a 'Mandate' to the District Court in the interest of justice and to prevent any further disability to conduct an evidentiary hearing whereupon Petitioner can be present to assist counsel and the Court in resolving this matter, due to his first hand knowledge and understanding of the facts contained within his good faith filing of his Writ of Coram Nobis.

Petitioner states that the facts and statements as contained herein are true, correct, certain and complete and are not meant to mislead, further they are made knowing the penalty for perjury as prescribed in 28 U.S.C. § 1746.

Further Affiant Sayeth Naught.

Dated this 11th day of February A.D. 2011.

Respectfully Presented,



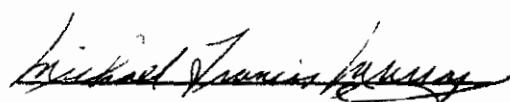
Michael Francis Murray

Petitioner / Affiant

CERTIFICATE OF SERVICE

I, Michael Francis Murray, do hereby attest and affirm that I caused a true and correct copy of the attached 'Petition for Writ of Mandamus' to be mailed via first class Mail, pre-paid postage to his attorney James J. Duggan at 50 Congress Street Boston Massachusetts with instructions to mail electronically the required amount of copies to the Clerk of the Court of Appeals, the Clerk of the District Court and to the Office of the United States Attorney all parties mailing address is 1 Courthouse Way, Boston, Massachusetts 02210.

On this 11th day of February A.D.2011.



Michael Francis Murray